

The seal of the University of Cambridge, featuring a shield with a cross and four lions, surrounded by a wreath and the motto "VERITAS LIBERABIT VOS".

No. 12-0730 RI

¹Statutory references are to RSMo 2000, unless otherwise noted.

2. Also on April 15, 2008, with her original return, Kruse paid \$404 to satisfy the tax liability on her original 2007 income tax return.

3. In calculating her tax liability, Kruse mistakenly added the amount of property tax she paid to Michigan into her federal taxable income. This mistake was made due to unclear instructions on tax form MO-1040.

4. Kruse realized her mistake in 2011, while preparing her 2010 income tax return. The instructions on the 2010 MO-1040 tax form clarified Kruse's tax obligation regarding property tax paid in Michigan.

5. On April 20, 2011, Kruse filed her amended return for 2007 income tax. The amended return removed the amount of property tax paid to Michigan from her federal taxable income. This lowered her Missouri 2007 income tax obligation by \$260. Kruse requested this overpayment be refunded on her amended return.

6. On July 15, 2011, the Director issued a Notice of Proposed Changes that agreed Kruse made an overpayment of \$260 on her liability for 2007 income tax. This notice denied Kruse's request for a refund because it was made after three years of filing her original return.

7. On September 8, 2011, Kruse filed a protest of the notice with the Director. The reason for this protest is that Kruse seeks an overpayment refund of 2007 income tax.

6. On May 4, 2012, the Director issued a final decision denying the refund claim.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.² Kruse has the burden to prove that she is entitled to a refund.³ Our duty in a tax case is not merely to review the Director's decision, but to find the facts and to determine, by the application

²Section 621.050.1.

³Sections 136.300.1 and 621.050.2.

of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.⁴

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.⁵ “When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit.”⁶ Section 143.801 provides:

1. A claim for credit or refund of an overpayment of any tax imposed by sections 143.011 to 143.996 shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later; or if no return was filed by the taxpayer, within two years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

2. If the claim is filed by the taxpayer during the three-year period prescribed in subsection 1, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within such three-year period, but is filed within the two-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

Kruse argues that her overpayment of 2007 income tax was based on inaccurate instructions contained within the 2007 MO-1040 tax form. The Director has not denied it, and this was no doubt frustrating to her. However, the deadline for Kruse to claim a refund of

⁴*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁵*Community Fed. Sav. & Loan Ass’n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. banc 1990).

⁶*State ex rel. Brady Motorfrate, Inc. v. State Tax Comm’n*, 517 S.W.2d 133, 137 (Mo. 1974).

overpayment was April 14, 2011, three years from filing her original return. Kruse made her claim for a refund on April 20, 2011, which is after the three-year deadline.

This Commission must apply the law as written. Neither this Commission nor the Director has the authority to change the law.⁷ We must deny the refund claim because no provision of law authorizes it.

Summary

We deny Kruse's claim for a refund of 2007 Missouri income tax.

SO ORDERED on April 17, 2013.

/s/ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner

⁷*Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).